

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

JUN 14 2004

PUBLIC SERVICE  
COMMISSION

In the Matter of: ]  
 ]  
NOTICE OF ADJUSTMENT OF THE RATES OF ]  
KENTUCKY-AMERICAN WATER COMPANY ]  
EFFECTIVE ON AND AFTER MAY 30, 2004 ]

CASE NO. 2004-00103

---

BLUEGRASS FLOW, INC.  
MOTION TO INTERVENE

---

Bluegrass FLOW, Inc., ("BGFlow") moves for full intervention in the above styled matter pursuant to 807 KAR 5:001, Section 3(8).

In support of its motion, Bluegrass FLOW, Inc., states:

1. Bluegrass FLOW, Inc., is a Kentucky nonprofit, nonstock corporation, with a mailing address

of: Bluegrass FLOW, Inc.  
c/o Foster Ockerman, Jr.  
200 N. Upper St.  
Lexington, KY. 40507

and an email address in care of: ockerman@kycounsel.com.

2. 807 KAR 5:0001, Section 3(8) governs intervention in Commission proceedings and provides:

If the commission determines that a person has a special interest in the proceedings which is not otherwise adequately represented or that full intervention by the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding, such person shall be granted full intervention.

3. The regulation presents a two pronged analysis the affirmative answer to either of which requires the granting of full intervention. The first is whether a movant has a special interest which is otherwise not represented. The second is whether the movant, *without* regard to any special interest, is “likely” to either present issues or develop facts which will assist the Commission in its consideration of the matter presented by the initial petition. BGFlow satisfies both tests.

4. BGFlow is a Kentucky nonprofit corporation which purpose is to research, publish and educate generally and as requested as to the comparative benefits of local ownership of water utilities, and as such, is the representative of and speaks for a substantial number of customers of RWE/KAWC<sup>1</sup> inside and outside the Lexington-Fayette Urban County Government's geographic and political borders. Although private polls by RWE/KAWC differ from independent third party polls as to the percentage or absolute number of individuals and/or customers of RWE/KAWC who agree with the positions of BGFlow, it is uncontested that the number of individuals taken even at the lowest estimate are substantial in terms of public interest and involvement in issues affecting RWE/KAWC.

5. To the extent BGFlow represents positions of RWE/KAWC customers located outside the Urban County Government, it presents a unique and special interest not adequately represented by the Lexington-Fayette Urban County Government.

6. Further, BGFlow is a nongovernmental organization (“NGO”) which puts it in a distinct light from the Attorney General’s Office of Utility and Rate Intervention. The Attorney General, while representing the whole of the citizens of the Commonwealth, must give strategic consideration in his participation in a

---

<sup>1</sup> For purposes of this motion, all references to "RWE/KAWC" shall include Kentucky-American Water Co. and all intervening corporate layers, as the context requires or as is appropriate.

rate case such as this to the positions he has taken in the past, and how the adoption of a particular position or advancement of a particular argument and the resulting Commission decision with respect thereto, may affect the long term treatment of such issues over many cases, or the treatment of an issue in a particular future or even contemporaneous rate case. Both the Attorney General and the Urban County Government are also constrained to follow certain instructions, policies and/or objectives which of almost certain guarantee in a democratic political process will not comport with the desire of each citizen. While it is true that the obligation of the Attorney General is to represent all citizens generally, and that of the Urban County Government is to represent its citizens generally, it does not follow that a position either may adopt in fact represents the interest of each citizen, including the citizens who support BGFlow and its positions.

As a nongovernmental organization, as well as a Kentucky nonprofit corporation, BGFlow has an unquestionable special interest in this proceeding not otherwise adequately represented. This satisfies the first component of the regulatory analysis and requires that full intervention be granted.<sup>2</sup>

7. The second line of analysis is whether BGFlow is “likely” to present issues or develop facts of assistance to the Commission in this particular case, an application rate increases. As the Commission observed in its Order of May 3, 2004, denying BGFlow’s motion to intervene in Case No. 2003-00478,<sup>3</sup> each case and each party’s request to intervene in such cases must be considered individually.<sup>4</sup>

---

<sup>2</sup> The regulation requires that upon such a determination, the Commission “shall” grant full intervention.

*Supra.*

<sup>3</sup> *Application of Kentucky-American Water Company for Approval of Accounting Accruals.*

<sup>4</sup> The Commission continues to note its dissatisfaction with a certain witness presented by BGFlow in Case No. 2002-00317, which has been duly noted. Without regard to such issues as the limited time and resources available to nongovernmental nonprofit organizations, the Commission is not entitled to allow its opinion of a

8. At a certain level, if the presentation of issues and development of facts in prior cases cannot be taken as indicative of the likelihood of so doing in this case, then the Commission is left with the degree to which to accept the statement herein by BGFlow that it is, in fact, likely to do so, and more likely to do so than not.

However, as an indication that BGFlow can present relevant issues and develop material facts, although not required by the regulation to do so as a part of this motion to intervene, BGFlow tenders Exhibit A, from the *Lexington Herald-Leader*, reporting that RWE, the ultimate corporate parent of Kentucky-American, evidently has a corporate policy of withdrawing from water project obligations where it does not receive the rate of return it desires (as opposed to the rate of return the relevant government, whether the nation of China or the Commonwealth of Kentucky through this Commission, deems appropriate). As the City of Shanghai discovered, the alternative is abrupt local ownership.

Whether there actually is such a policy remains to be developed factually; there can be no doubt that an issue has been presented. This satisfies the second component of the regulatory analysis and requires full intervention be granted.

9. Finally, in denying BGFlow's motion to intervene in Case No. 2003-00478, *supra*, the Commission concluded its Order by stating: "In addition, FLOW has failed to demonstrate that it is likely to assist the Commission in rendering its decision." That misstates the regulation. The regulation governing intervention calls for a determination that the facts and/or issues likely to be presented will assist, not whether the moving party will assist, the Commission. It should be the goal of the Commission's

---

particular witness in a prior case to affect its decision on the pending motion to intervene in the instant case.

procedures to conduct the fullest examination possible of the facts and issues, and in the interest of a complete hearing, virtually any material fact or issue developed and presented is of assistance, even if the final order of the Commission decides an issue or interprets a fact contrary to the position of the party which brought it forward. The regulation does not demand complete prescience of the Commission, however, merely a determination that it is likely, or not, that facts and issues of assistance may be presented. BGFlow, as a research and education organization, has the capacity to develop facts and present issues, and, although the Commission seems disinclined to give past performance any credit, BGFlow has developed material facts and presented relevant issues before the Commission and in other forums in the past. The balancing test of likelihood requires an assessment of the probabilities of events, a test satisfied in the instant case by the presentment of the issue of corporate reaction to a rate determination which was less than desired by RWE.

#### Conclusion

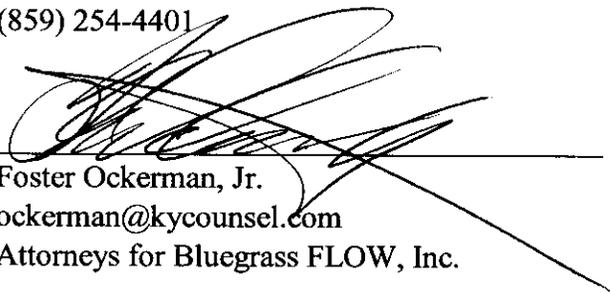
Bluegrass FLOW, Inc., as a nonprofit, nongovernmental citizen-based and supported corporation representing the views of individuals both within and without Fayette County, has a special interest not otherwise adequately represented in this case. That is sufficient ground for granting this motion.

Alternatively, Bluegrass FLOW, Inc., is likely to present issues and/or to develop facts of assistance to the Commission in considering this matter without unduly complicating or disrupting the proceeding; which is also sufficient grounds for granting this motion.

Wherefore, Bluegrass FLOW, Inc., requests it be granted full intervention in the above styled matter.

Respectfully submitted,

MARTIN, OCKERMAN & BRABANT LLP  
200 N. Upper St.  
Lexington, KY 40507  
(859) 254-4401



---

Foster Ockerman, Jr.  
ockerman@kycounsel.com  
Attorneys for Bluegrass FLOW, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion to Intervene was served by first class mail, postage prepaid, upon the following on this the 14<sup>th</sup> day of June, 2004.

Deborah Eversole  
Public Service Commission  
211 Sower Dr.  
PO Box 615  
Frankfort, KY 40601

David Jeffrey Barberie  
Lexington-Fayette Urban County Government  
Department Of Law  
200 East Main Street  
Lexington, KY 40507

Coleman D. Bush  
Director Business Development  
Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

Joe F. Childers  
201 West Short Street  
Suite 310  
Lexington, KY 40507

Roy L. Ferrell  
West Virginia American Water Company  
1600 Pennsylvania Avenue  
Charleston, WV 25302

Lindsey W. Ingram, Jr.  
Lindsey W. Ingram, III  
Stoll, Keenon & Park, LLP  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507-1801

Michael A. Miller  
West Virginia American Water Company  
1600 Pennsylvania Avenue  
Charleston, WV 25302

Roy W. Mundy II, President  
Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

David Edward Spenard  
Assistant Attorney General  
Office of the Attorney General  
Utility & Rate Intervention Division  
1024 Capital Center Drive  
Suite 200  
Frankfort, KY 40601-8204



Attorneys for Bluegrass FLOW, Inc.

# Kentucky American parent drops China deal

## BEIJING ALTERS RULES ON RATE OF RETURN FOR INVESTMENT

By Elaine Kurtenbach  
ASSOCIATED PRESS

SHANGHAI, China — RWE Thames Water, the world's third-biggest water supply company, has withdrawn from a water treatment project in Shanghai after the government changed rules on the rate of return for such investments.

Thames Water, a unit of German utilities conglomerate RWE AG, which is also the parent of Kentucky American Water, agreed to hand the project to state-run Shanghai City Water Treatment North Co., according to a notice yesterday on the Chinese company's Web site.

Its withdrawal from the Shanghai project, China's first privately funded water treatment plant, highlights the perils foreign investors face in major infrastruc-

ture projects — a potentially huge market in China but one where shifts in policy have tended to raise risks.

Government efforts to woo foreign investment for water treatment and other infrastructure projects have been hindered by uncertainty over the future of build-operate-transfer deals such as the one in Shanghai. Thames Water spent \$73 million to build the project and operated it after it was completed in 1998. The plan originally called for Thames Water to run the plant for 20 years before handing it over to the government — to enable the foreign company to recoup its investment.

But in 2002, the government declared that the guaranteed rates of return promised to investors in some projects, including the Shanghai plant, were illegal. Negotiations over new terms resulted in Thames Water's withdrawal, the notice by Shanghai City Water Treatment North said.

ullins, (859)  
9) 231-8575.

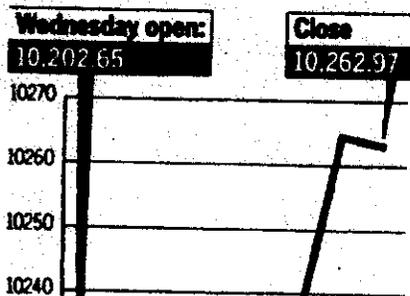
S

Leadership  
celebrate its 25th  
day at the  
pen. Cost \$25.  
will support the  
Government Fund  
on: (859) 226-

EA WINGO

tial or profes-  
to Personnel  
Kington Her-  
venue, Lexing-  
to hlbusi-  
or fax to  
he name and  
on. Write the  
son on the  
photos will not  
otos must be

### Dow, hour by hour



### Foreign indexes

Index	Close	Chg
Amsterdam	334.48	+2.60
Brussels	2,414.70	+14.82
Frankfurt DAX	3,888.31	+24.13
London FT-SE	1004,422.80	+0.10
Hong Kong Idx	12,201.75	+96.20
Paris CAC-40	3,646.23	+21.76
Nikkei 225	11,242.34	-54.42
Sydney	3,476.80	+19.80
Milan	20,566.00	+90.00

### Currencies

U.S. dollar Foreign

### Volume surge, unusual increases in volume

Company	Ticker	Last Pri	Daily Chg	Daily % Chg	YTDX Pri Chg	PE/ PPE	52W Vol Chg
<b>LARGE-CAPS (\$5+BIL., SHARES \$10+)</b>							
RschMot	RIMM	118.97	-3.73	-3	+78	cc/	+10.5
SPDR	SPY	113.13	+4.2	+4	+1.7	q/	+9.7
DJIA Diam	DIA	102.84	+6.7	+7	-1.7	q/	+9.3
KLA Tnc	KLAC	46.06	-1.65	-3.5	-21.3	5.20/2.00	+4.1
CmcBNJ	CBH	64.31	+2.90	+4.7	+22.5	2.30/1.90	+3.7
Imclone	IMCL	74.85	-1.49	-2	+88.7	dd/4.80	+3.7